HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.3782 of 1999

Dated 9th day of April, 2007

Between:

M/s.Kranthi Constructions, Hyderabad .. Petitioner

And

The Chief Engineer, I & CAD, Dept. Erramanzil,
Hyderabad
and three others .. Respondents

O R D E R:

This writ petition is filed seeking a direction to the respondents not to insist upon or recover the alleged seignorage fees in a sum of Rs.2,34,300/- from the bills of the petitioner's firm in pursuance of the letter dated 30.1.1999 issued by the 2nd respondent.

The brief facts of the case are that the petitioner-firm submitted tender documents along with earnest money deposit of Rs.1,00,000/- for excavation of flood flow canal from Singitham Reservoir to join with Nizamsagar main canal at 6.581 kms. including improvements to bund, construction of C.D. & C.M. Works, etc. The Commissionarate of Tenders accepted the petitioner's tender as lowest one and an agreement was entered into with the 2nd respondent. At the time of execution of the agreement, the petitioner furnished bank guarantee for a sum of Rs.2.80 lakhs in favour of the 2nd and 3rd respondents. After completion of work in October, 1997, final payment of the bills was made to the petitioner in October 1998. Now, the petitioner's grievance is that the 2nd respondent, in his letter dated 30.1.1999 addressed to the 4th respondent marking a copy to it, stated that "after the final payment, the Vigilance and Enforcement, Nizamabad inspected the site as well as the entire records and pointed that seignorage fees due on Mines, Minerals and Metal should not have been released in the final bill and instructed to recover the same from the contractor". It also reveals that the 2nd respondent directed the 4th respondent to recover seignorage charges amounting to Rs.2,34,300/- from the petitioner-firm.

A detailed counter affidavit is filed wherein it is stated that it is only by mistake the entire amount was paid to the petitioner without collecting seignorage charges. According to Rule-10 read with Rule 26 of A.P. Minor Mineral Concession Rules, a person has to pay

seignorage fee on the Mineral used and consumed, and as the entire amount was wrongly paid invoking condition No.13.6., the 2nd respondent addressed a letter, dated 30.1.1999 to the 4th respondent-Executive Engineer directing him to recover this amount.

Heard the learned counsel for both the parties.

Maybe it is true that the authorities have the power to recover the amounts, but before that it is for the authorities to issue a show cause notice to the petitioner calling upon his explanation as to why the amount shall not be recovered. In the instant case, evidently, before ordering recovery, the 2nd respondent has not issued any notice to the petitioner calling for his explanation, and thus the decision to recover the amount is unilateral and hence, the letter dated 30.1.1999 is liable to be set aside.

In the result, the writ petition is allowed setting aside the order, dated 30.1.1999. However, the 2nd respondent is hereby directed to issue a notice calling for the petitioner's explanation as to why an amount of Rs.2,34,300/- shall not be recovered from it and it is left open to the petitioner-firm to offer its explanation as to why and how it is not liable to pay the amount. No costs.

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09.04.2007

bcj